

**ROBERT H. CLELAND
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**GUIDELINES
FOR COURTROOM CONDUCT OF COUNSEL**

1. CIVILITY

- Counsel are expected to conduct themselves with the courtesy to which they have committed themselves, consistent with the Civility Principles adopted by the Eastern District of Michigan and the high level of professionalism expected of attorneys admitted to practice before this bench.

2. OBSERVING FORMALITY

- Counsel must be punctual.
- Please rise when the judge enters (or is standing); when court is being called into session, please simply stand and turn your attention to the bench. Do not create distractions such as talking, removing items from a briefcase, looking through papers on your table, etc.
- Please rise when jury is ushered in or out of court, but avoid turning your back to the bench. Please remain standing until the last juror has taken a seat. Ordinarily you will then hear, "please be seated."
- Please rise and remain standing when addressing the court. This includes making and responding to objections.
- All parties, witnesses, counsel, etc. are to be addressed and referred to by title and last name (***Mrs.*** Smith, ***Mr.*** Jones, etc.). *Avoid using first names or nicknames unless reasonably required by trial circumstances (e.g. a witness knows only the first name or nickname of a person and can refer to him only on that basis).*
- Counsel (and all others at counsel table) should avoid expressive gestures, facial expressions, audible comments and the like as manifestations of approval, disapproval, or any other point of view in reaction to events in the courtroom, the argument of opposing counsel or testimony being presented.
- Please attend sessions of court appropriately attired in business wear, e.g., suit, shirt and tie for gentlemen.

- Addressing a judicial officer simply as “Judge” is common in social or informal encounters, but is viewed by many as inappropriately familiar in a session of court. A better address in court is “Your Honor” or “Judge _[last name]_.”
- No person other than an attorney is permitted to possess a cellphone or equivalent electronic device (pager, smartphone, etc.), in the courthouse. Any such device in the possession of an attorney must be powered off in the courtroom, not merely placed in “silent” or “vibrate” mode. A device that is activated such that it rings or vibrates in the courtroom is subject to confiscation.

3. **STIPULATIONS ON THE RECORD**

- Do not offer a stipulation within the hearing of the jury. Confer with opposing counsel quietly and decide if a stipulation is appropriate. Announce it only when agreed to (preferably, but not necessarily, in writing).

4. **THE JURY**

- Please maintain a respectful distance from the jury and avoid approaching the rail of the jury box.
- When engaged in questioning a witness, please direct yourself to that witness. Do not obviously face, gesture toward or otherwise dramatically play to the jury during questioning.
- Do not use a juror's name, single out or otherwise directly address an individual juror in opening statement, trial presentation or closing argument.

5. **OPENING STATEMENT**

- There may be only a fine line separating factual presentations from "argument." Counsel should nonetheless endeavor to avoid argument in opening statement.
- Do not attempt to define the law; direct yourself to a concise summary of the important facts.
- In the usual non-extended or non-complex case, opening statements should be delivered in fewer than 20 minutes.

6. **WITNESS EXAMINATION**

- **USE THE LECTERN** Please stand when questioning witnesses and use the lectern, which you may move. Please use the microphone. You may leave the lectern for a particular purpose, such as retrieving or handling an exhibit, while questioning witnesses. If you wish to approach the witness or the bench, please

seek consent of the court (e.g. “permission to approach with an exhibit, Your Honor?”). As you position the lectern to suit your needs, please try to avoid blocking the view of other counsel.

- **MARKING AND HANDLING EXHIBITS AND DOCUMENTS** Court time cannot be used for marking exhibits. Please mark exhibits in advance of the court session. Please have all documents at hand before you start a witness’s examination. Whenever feasible, hand the witness the relevant exhibits before you begin questioning.
- **INSTRUCTIONS TO WITNESSES** The "Instructions to Witness" sheet attached at the end of this list explains a few mechanics of testimony in the courtroom. Please either provide a copy to the witnesses before each is to testify, or explain the substance of it. Please inform your witnesses as to general courtroom etiquette, and that they are expected to be punctual. When the examination of a witness is to be resumed after a recess or daily adjournment, the witness should be in court and near the witness box before court is called back in session. If a new witness is to be called at such a time, that witness should be present in the courtroom.
- **WITNESS ATTIRE** Please inform witnesses that reasonably neat, clean attire is expected of them. In the event that your witness arrives wearing, for example, beach attire or a tee shirt with an offensive picture or a political message printed on it, the witness will be excluded from the courtroom by court security or the judge. Refer to this court's "Order on Courtroom Conduct of Spectators" (available at www.mied.uscourts.gov) for further information.
- **FORM OF EXAMINATION** The court interprets Rule 611 as limiting witness examination to direct, cross on the same subject matter, and redirect concerning issues raised during cross. Specific permission supported by good cause is required to extend examination beyond these areas (e.g., as to a new matter raised in re-direct). Additional examination will be made available in the event that the court asks followup questions *sua sponte* or at the request of a juror.
- **LEADING QUESTIONS** The court encourages leading questions on direct for matters that are non-controversial (*i.e.*, those believed to be undisputed) and those there are merely introductory.

- **“EXPERT” OPINION WITNESS** It is neither necessary nor desirable to ask the judge to make a finding in the presence of the jury that a witness is qualified to testify as an “expert.” A proper procedure would be to lay a foundation for the witness to offer opinion evidence, and proceed with questions. Objections to the qualification of the witness or request for voir dire may be made on the record and, if needed, further explained outside the presence of the jury.
- Address and refer to witnesses by title and last name (e.g., Mrs. Smith).

7. **OBJECTIONS**

- All objections and case-related remarks are to be addressed to the court, not to opposing counsel or to the jury. If a brief private conversation between counsel is needed while court is in session, simply ask. When you object or respond to an objection in the presence of the jury, please make your statement without unnecessary drama; please be on-point and clear as to the purported basis.
- When the court rules, neither argue the objection further in the hearing of the jury nor "thank" the court for its ruling.
- Note any matters that you think may require extended argument and raise them at the first recess, or, if the issue is actually urgent, at sidebar (although the court discourages too-frequent requests for sidebars or unreasonably extended sidebars with the jury in the box).
- If there is a matter that requires the court's attention on the record before the session is to begin, please notify court staff as soon as you are aware of the need, and do not wait until the jury has been ushered into the courtroom.

8. **FINAL ARGUMENT**

- Unless the case has been unusually extended or complex, a party’s final argument should not exceed about thirty minutes. Instructions will have already been given, and you are free to tie the facts to the law, or talk about legal principles you believe you have proved or responded to. However, you must avoid redefining, reinterpreting, or further instructing or explaining the law.

INSTRUCTIONS TO WITNESS

1. Go directly to the court reporter's desk, to the right of the bench, next to the jury box. Give the reporter your name.
2. The reporter will then ask you to raise your right hand and the judge will have you swear to tell the truth.
3. If your religious beliefs do not allow you to "swear an oath," you must "affirm" that you will testify truthfully under the penalty of perjury. In this event, *please notify the judge* by saying "Your Honor, I wish to affirm" after the reporter asks you to raise your hand, or you may simply reply to the oath, "I so affirm."
4. After you are told to be seated, enter the witness box and be seated. The chair is not bolted to the floor. Adjust the microphone to point about at your chin, not at your mouth, and try to talk "over" the microphone rather than directly into it. Swing it out of the way for the next witness when you are leaving. Sit comfortably and speak in a normal voice.
5. You may use the bottled water near you if need a drink. Please use a disposable cup and put it in the waste basket in the witness box when you leave.